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WALTHAM MA 02451-1215

**MAILED**

MAR 16 2009

In re Application of	:	
Heron et al.	:	
Application No. 10/539,220	:	OFFICE OF PETITIONS
Filed: June 17, 2005	:	ON APPLICATION FOR
Atty Docket No. 100938-1P US	:	PATENT TERM ADJUSTMENT

This is in response to the PETITION TO REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE UNDER 35 USC 154(b) AND 37 CFR 1.705 filed February 12, 2009. Applicants submit that the patent term adjustment should be increased from six hundred twenty (620) to nine hundred sixty-three (963) days. Referring to Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008), applicants request this correction on the basis that the Office will take in excess of three years to issue this patent<sup>1</sup>.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for

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<sup>1</sup> Applicants assert this calculation assuming that the patent issues June 2, 2009.

seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

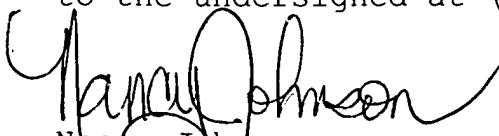
Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Receipt of the request for correction of inventorship filed February 12, 2009. This request has been forwarded to the primary examiner for consideration.

Thereafter, the application will be forwarded to the Office of Data Management for issuance of the patent. The revised patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



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